

# BULLETIN of the National Association of Credit Men

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## EFFECT OF THE WAR UPON CONTRACTS

1. *Contracts between citizens, or between citizens and aliens, not alien enemies, unless especially provided in the contract, are not affected by extraordinary conditions created by war.* The fact that conditions are materially changed, as a result of war, through increase in the price of materials or labor, or because of the failure of sources of supply or because of other unforeseen circumstances, in no way relieves from liability to perform as agreed, unless the contract specifically provides against such contingency.

2. *Contracts between citizens and alien enemies.* Any fresh contract across the line of hostilities is illegal, and all contracts, which tend to increase the resources of the enemy, or involve commercial dealing between the two countries are prohibited. An alien enemy resident in his own country cannot sue in our courts, but he may be sued if he, or his property, can be reached by process. His rights under contracts made before the commencement of war are, however, suspended, not annulled, and can be enforced upon the conclusion of peace (Anson on Contracts, p. 138). But if an alien enemy is permitted to remain in a hostile country (as a German subject resident in the United States) his contracts there made are valid but he cannot sue upon them during the continuance of hostilities. In case he be sued, he may defend.

Whether a pre-existing contract between a citizen and an alien enemy is dissolved by war depends upon whether it is in its essence, antagonistic to the laws governing a state of war. If rights have become vested under it, the contract will either be qualified, or its performance suspended, according to its nature, so as to strip it of its objectionable features and save such rights if possible. The tendency of adjudication is to preserve, and not to destroy, contracts existing before the war (Clark on Contracts, p. 148).

3. *Impossibility of performance caused by act of the public enemy is no excuse.* It is a general rule of the law of contracts that impossibility, which arises subsequent to the formation of a contract, does not excuse from performance (Anson on Contracts, p. 396). If performance should become impossible the promisee must stand the loss. If the promisor makes his promise unconditionally, he takes the risk of being held liable even though performance should become impossible by circumstances beyond his control. In support of this statement Anson cites the interesting case of *Jane vs. Paradine*, Aleyen 26, wherein the facts were as follows:

Paradine sued Jane for rent due upon a lease. Jane pleaded:

"That a certain German prince, by name Prince Rupert, an alien born, enemy to the king and his kingdom, had invaded the realm with an hostile army of men; and with the same force did enter upon the defendant's possession, and him expelled and held out of possession \* \* \* whereby he could not take the profits."

But the court held that this was no excuse:

"And this difference was taken, that where the law creates a duty or charge, and the party is disabled to perform without any default in him and hath no remedy over, there the law will excuse him. As in the case of waste, if a house be destroyed by tempest or by enemies, the lessee is excused \* \* \*. But when the party by his contract creates a duty or charge upon himself he is bound to make it good, if he may, notwithstanding, any accident by inevitable necessity, because he might have provided against it by his contract. And therefore, if the lessee covenant to repair a house, though it be burnt by lightning, or thrown down by enemies, yet he ought to repair it."

4. *Impossibility of performance caused by operation of law* (as where a manufacturing establishment is, by Act of Congress, commandeered for public use), *relieves the promisee from obligation to perform*. Whether under such circumstances the contract is merely suspended, or whether it is abrogated, seems to depend, as in Paragraph 2, *supra*, upon the particular facts of each case. It is not advisable to attempt to lay down a general rule, and the matter should in each case be submitted to counsel for examination of precedents and advice.

**CONCLUSION:** Because of the probability of change in conditions surrounding the performance of contracts entered into during the existence of a state of war resulting from the extraordinary situation thereby created, it is important that every contract hereafter made shall specifically set forth and define the intention of the parties with regard to its suspension, annulment or modification, upon the happening of any circumstance which would materially affect the relative situation of the parties. Except where a contract is void because against public policy, the will of the parties expressed in the agreement will control.

Opposition to harmful legislation by local associations of credit men is quite as important as advanced work for new legislation. In Tennessee, the legislative committees had mapped out plans for certain new legislation, but there was forced upon them the necessity of making strenuous efforts against measures which, if passed, would have seriously hurt the business interests of the state. In writing on this subject, President Newman of the Bristol association points out that never before have the business men of the state been so keenly alert to defeat abnoxious legislation placed before the legislature, and the best part of it was that the members were as ready to do their part in negativing this hurtful legislation as they would have been enthusiastic in forwarding the association's model statutes.

## West Virginia Credit Men's Conference

The two-day conference of the West Virginia credit men, held March 12-13, was characterized by great enthusiasm. H. W. Russell spoke of indirect benefits obtained from the association work, and direct benefits were discussed by Bert Evans, of Clarksburg. A. W. Molynaeux, of Pittsburgh, described the work being done by the Pennsylvania associations.

Secretary Tregoe, of the National Association, spoke of the origin and growth of the association, stating that it is now the largest and strongest commercial unit in the world. In closing he declared that three methods were essential for success in business,—thrift, carefulness in both selling and purchasing, and honesty above everything else.

H. L. King of Wheeling spoke on "Cooperation of credit men for the economic administration of insolvent estates"; T. E. Graham chose for his subject "Should the credit man be placed in full charge of credits"; John L. Hawkins spoke on "The abuse of terms; cash discount and interest charges."

At the West Virginia Credit Conference another subject of importance was the revision of terms. It was felt that in view of the fact that manufacturers and importers are shortening their terms and reducing their cash discount to such an extent as to make a revision of present terms imperative, there must be a readjustment of terms and greater uniformity.

It was therefore resolved that special discount terms be withdrawn and the following terms established as uniform:

Groceries .....	30-1-15
Hardware .....	30-1-15
Supplies .....	30-1-15
Dry Goods .....	2-10-30 60 days extra
Boots & Shoes .....	60-2-30
All other lines .....	60-2-10

These terms are to be submitted to the credit men of the state through their various associations, it being understood that they are not to apply to special dating sales, such as dry goods, boots and shoes or season goods that are usually sold on spring or fall dating.

It was, however, agreed that due interest should be charged on all accounts after maturity, except where frequent purchases are made during the month and monthly settlements made on or before the 15th of the following month, including all bills of the previous month.

In resolutions offered by C. C. Henking, of Huntington, West Virginia credit men went on record as determined to do all in their power to bring about through education a better understanding of sound retail methods. Mr. Henking pointed out how heavy is the toll of losses caused by incompetence and inexperience, official figures showing that under this head we have the principal cause

of business failures. The ideal, he declared, is that the Association should strive earnestly to make it possible for our young people as they look forward to business prospects to obtain the rudiments of a business education such as would enable them to conduct their affairs intelligently. It would, Mr. Henking declared, be a great boon to the country if there could be put within the reach of every school-boy and school-girl in the land a simple bookkeeping course and a sound teaching upon cost systems.

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### Clarksburg Makes High Average Adjustments

The Adjustment Bureau of the Clarksburg Association, known as the Central West Virginia Credit and Adjustment Bureau reports under date of March 1st upon the friendly adjustments it has put through. It is a highly creditable showing that the bureau is able to make. The results run as follows:

First case. The creditors have been paid forty per cent and will receive about seventy-five per cent.

Second case. The policy of insurance assigned to bureau and creditors will be paid in full.

Third case. Creditors have been paid thirty-three per cent and final settlement yet to be made.

Fourth case. Creditors have been paid twenty-four per cent, final settlement not yet made.

Fifth case. Creditors have been paid thirty-six per cent, final settlement not yet made.

Sixth case. Creditors have been paid fourteen per cent, funds in hand to pay another twenty per cent, the estate will pay probably sixty per cent.

Seventh case. Creditors have been paid forty-eight per cent.

Eighth case. Creditors have been paid in full.

Ninth case. In course of adjustment, but will pay in full.

Tenth case. In course of adjustment, but funds in hand sufficient to pay in full.

Eleventh case. In course of adjustment, funds in hand enough to pay fifty per cent.

Twelfth case. Assignment of insurance policy not adjusted, and impossible to state the amount that will be paid.

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The war has brought up some new problems in the field of insurance protection, particularly fire and casualty as regards foreign companies. It would be well for those holding policies with companies doing business under the authority of governments now at war with the United States to consult with the National office, whose service is at the disposal of members without charge.